

§ 779.257 Exemption applicable to gasoline service establishments under the prior Act.

Section 13(b)(8) of the prior Act (before the 1966 amendments) contained an exemption from the overtime pay requirements for "any employee of a gasoline service station". This exemption was applicable prior to February 1, 1967, without regard to the annual gross volume of sales of the gasoline service station by which the employee was employed. The removal of this exemption by the 1966 amendments brought non-exempt employees of covered gasoline service stations within the purview of the overtime requirements of the Act for the first time.

ANNUAL GROSS VOLUME OF SALES MADE OR BUSINESS DONE

§ 779.258 Sales made or business done.

The Senate Report on the 1966 amendments reaffirmed the intent to measure the "dollar volume of sales or business" including "the gross receipts or gross business" to determine whether an enterprise is covered. This concept was first expressed in the Senate Report on the 1961 amendment (S. Rept. No. 145, 87th Congress, first session, p. 38). The phrase "business done" added by the 1966 amendments to section 3(s) merely reflects with more clarity the economic test of business size expressed in the prior Act in terms of "annual gross volume of sales" and conforms the language of the Act with the Congressional view expressed in the legislative history of the 1961 amendments. Thus, the annual gross volume of an enterprise must include any business activity in which it engages which can be measured on a dollar basis irrespective of whether the enterprise is tested under the prior or amended Act. The Senate Report on the 1966 amendments states:

The intent to measure the "dollar volume of sales or business" including the "gross receipts or gross business" in determining coverage of such an enterprise was expressed in the Senate report above cited at page 38. The addition of the term "business done" to the statutory language should make this intent abundantly plain for the future and remove any possible reason for misapprehension. The annual gross volume of sales made or business done by an enterprise, within the mean-

ing of section 3(s), will thus continue to include both the gross dollar volume of the sales (as defined in sec. 3(k)) which it makes, as measured by the price paid by the purchaser for the property or service sold to him (exclusive of any excise taxes at the retail level which are separately stated), and the gross dollar volume of any other business activity in which the enterprise engages which can be similarly measured on a dollar basis. This would include, for example, such activity by an enterprise as making loans or renting or leasing property of any kind. (S. Rept. No. 1487, 89th Congress, second session, pp. 7-8.)

§ 779.259 What is included in annual gross volume.

(a) The annual gross volume of sales made or business done of an enterprise consists of its gross receipts from all types of sales made and business done during a 12-month period. The gross volume of sales made or business done means the gross dollar volume (not limited to income) derived from all sales and business transactions including, for example, gross receipts from service, credit, or other similar charges. Credits for goods returned or exchanged and rebates and discounts, and the like, are not ordinarily included in the annual gross volume of sales or business. The gross volume of sales or business includes the receipts from sales made or business done by the retail or service establishments of the enterprise as well as the sales made or business done by any other establishments of the enterprise, exclusive of the internal transactions between them. Gross volume is measured by the price paid by the purchaser for the property or service sold to him, as stated in the Senate Committee Report (§ 779.258). It is not measured by profit on goods sold or commissions on sales made for others. The dollar value of sales or business of the entire enterprise in all establishments is added together to determine whether the applicable dollar test is met. The fact that one or more of the retail or service establishments of the enterprise may have less than \$250,000 in annual dollar volume and may meet the other requirements for exemption from the pay provisions of the Act under section 13(a)(2), does not exclude the dollar volume of sales or business of that establishment from the annual gross volume